

Health & Safety

April 2008 Briefing



Introduction

This briefing is about the Control of Asbestos Regulations 2006. They implement the European Union Asbestos Worker Protection Directive and introduced important new changes to the law on asbestos and the asbestos licensing regime.

They repeal the Control of Asbestos at Work Regulations 2002, the Asbestos (Licensing) Regulations 1983, and the Asbestos (Prohibitions) Regulations 1992 and replace all these with a single set of regulations.

The HSC has issued two new approved codes of practice (ACoPs) covering the new regulations: *Work with materials containing asbestos* L143 which **replaces** L27 and L28 and a special ACoP covering Regulation 4, *The management of asbestos in non-domestic premises* L127. They are essential reading as they provide practical guidance on how to comply with the regulations.

A summary of important new changes

A single control limit

There is **no action level**. There now a new single Control Limit of $0.1\text{f}/\text{cm}^3$ and a Short Term Exposure Limit (STEL - ACoP standard, not in the regulations) of $0.6\text{f}/\text{cm}^3$ measured over 10 minutes. The Control Limit is a level of asbestos fibres in air that, so far as is reasonably practicable, should not be exceeded. No-one's personal exposure should ever go above this limit when measured over 4 hours, in line with current practice, which is equivalent to the directive's $0.1\text{f}/\text{cm}^3$, if the shift is 8 hours long.

Employers using their own workers on their own premises will no longer be exempt from the licensing requirements

Mandatory training requirements for anyone liable to be exposed to asbestos. Employees are entitled to a copy of their training certificate, and to be given the results of tests such as face-fit test, air monitoring, medical examination etc.

A requirement to analyse the concentration of asbestos in the air using the 1997 World Health Organisation recommended method of measurement.

Changes to the licensing regime: De-licensing of work involving removal of textured coatings. Most work with textured decorative coatings containing asbestos eg "artex" will be removed from the licensing regime. The T&G, other unions and many employers strongly opposed this move - these materials are found in millions of buildings. Relaxing the licensing regime sends out the **wrong message** about asbestos and **this does NOT mean that work with textured coatings is safe.**

The requirement to notify work to the enforcing authority and the requirement for medical surveillance of workers will no apply to certain specified types of work where (a) the worker exposure is sporadic and of low intensity **and** (b) it is clear from the risk assessment that the STEL will not be exceeded.

No exposure to asbestos can be considered to be sporadic and of low intensity if the concentration of asbestos in the atmosphere is liable to exceed 0.6 fibres per cm³ of air measured over 10 minutes (this is set out in the ACoP L143 para 32).

Risk assessment

All work with asbestos containing materials, including textured coatings, must be undertaken by trained workers following a risk assessment and in accordance with appropriate controls to prevent exposure to asbestos fibres. The approved code of practice to the regulations describes how to go about removing them safely.

A summary of the regulations

The Asbestos Regulations 2006 apply to all work with asbestos materials carried out by employers, the self-employed and employees.

Here is a brief summary of the most important regulations. This is not the full text and you should consult the regulations for full details.

Reg 4 Duty to manage asbestos in buildings

Whoever has control of a building has a duty to manage asbestos there.

This means they must:

- Carry out a **risk assessment** to find out if asbestos is present or liable to be present - this should include looking at of the building plans, and inspecting all the reasonably accessible parts of the building
- **Write down** the assessment and its conclusions – and any subsequent review of the assessment
- **If asbestos is present or liable to be present** decide what risk it poses, make a written plan identifying where it is, and note in the plan the measures to be taken to manage the risk
- **The written plan must include adequate measures** for:
 - monitoring the condition of the asbestos or any substance suspected of containing asbestos
 - ensuring it is properly maintained or where necessary safely removed,
 - ensuring that information about the location of the asbestos or substance suspected of containing asbestos is provide to **anyone likely to disturb it** (eg maintenance workers such as electricians, buildings renovators) and to the **emergency services**.
- Ensure that the **plan is reviewed and revised at regular intervals**, and **immediately** if the plan is no longer valid or there has been a significant change to the premises.
- Ensure that the **plan is implemented** and the implementation measures taken are written down.

Reg 5 Identification of the presence of asbestos

An employer must not carry out any work on any premises which may expose employees to asbestos unless they have found out whether asbestos is present or liable to be present, or assumes that it is present, **and** observes the relevant provisions of the regulations.

Reg 6 Assessment of work which exposes employees to asbestos

An employer cannot carry out work which is liable to expose their employees to asbestos unless they have done a risk assessment, recorded the findings, and decided what steps are to be taken to prevent exposure or reduce it to the lowest level reasonably practicable.

Reg 7 Plans of work

The employer must prepare a written plan of the work to be done.

Reg 8 Licensing of work with asbestos

An employer cannot undertake any work with asbestos unless they have obtained a licence from the HSE. In practice this will cover most work with asbestos. But there are some exceptions (**Reg 3(2)**). These are:

- the exposure of employees to asbestos is sporadic and of low intensity; (see above for the definition given at Para 32 of the ACoP)
- the risk assessment shows that exposure of any employee will not exceed the control limit; **and**
- the work involves short, non-continuous maintenance activities, removal of materials in which the asbestos fibres are firmly linked in a matrix, encapsulation or sealing of asbestos-containing materials which are in good condition **or** air monitoring and control and the collection and analysis of samples to ascertain whether a specific material contains asbestos.

Licensing – important note

Although a licence may not always be required, the Control of Asbestos Regulations 2006 still require employers to carry out risk assessments and put in place control measures to prevent exposure of employees or members of the public to asbestos. The work still needs to be done in compliance with the controls required under CAW 2006 and the employer should be able to demonstrate that whoever does the work is complying with these requirements.

Licensed contractors may have better experience, organisation and discipline relating to work with asbestos. You can ask your employer to use a licensed contractor for all types of work with asbestos even if it is not expressly required by the regulations

A list of licensed contractors is available from the HSE Licensing Unit which also has dedicated pages on the HSE website. Their phone number is 0131 247 2135.

Reg 9 Notification of work with asbestos

An employer cannot undertake any work with asbestos unless they have notified the enforcing authority (HSE or EHO) – there are some exceptions which are the same as those listed under Reg 8.

Reg 10 Information, Instruction and Training

Every employer must provide adequate information, instruction and training to employees, including supervisors, who are exposed or liable to be exposed to asbestos.

Reg 11 Prevention or reduction of exposure to asbestos

Every employer must prevent the exposure of their employees to asbestos so far as reasonably practicable, and where exposure cannot be prevented, use control measures to reduce exposure to the lowest level practicable. In addition, suitable respiratory equipment of a standard approved the Health and Safety Executive must be provided.

Every employer must ensure that no employee is exposed to asbestos over the control limit, and if the control limit is exceeded then they must tell the employees concerned and take measures to ensure it is not exceeded again.

Reg 12 Use of control measures

Every employer must ensure that the control measures are properly used or applied
Every employee must make full and proper use of any control measure (eg RPE or PPE), ensure it is returned after use and report any defects.

Reg 13 Maintenance of control measures

Every employer must ensure that plant and equipment including RPE/PPE is maintained properly and kept in good repair, and regularly review systems of work and supervision. Exhaust ventilation equipment must be tested and examined at regular intervals and records kept of each examination/testing and repairs for at least 5 years.

Reg 14 Provision and cleaning of protective clothing

Every employer must provide adequate and suitable protective clothing and ensure that it is either disposed of properly as asbestos waste, or cleaned.

Reg 15 Arrangements to deal with accidents, incidents and emergencies

The employer must ensure that procedures are in place for emergencies. They must also ensure that if there is an unplanned release of asbestos at the workplace, immediate remedial steps are taken.

Reg 16 Duty to prevent or reduce the spread of asbestos

Every employer must prevent or reduce to the lowest level practicable the spread of any asbestos.

Reg 22 Health records and medical surveillance

This includes the following (unless the exceptions noted under Reg 8 apply):

- employer must maintain a health record for every employee and keep it for 40 years
- employer must ensure that every employee is kept under surveillance by a relevant doctor
- surveillance must include a medical examination (including the chest) not more than 2 years before the start of asbestos exposure, and further examinations at no more than 2-yearly intervals.
- Employer must pay for these medical examinations
- Employer must give the doctor access to any records they have to keep under the Regs if they request them
- Employees must attend these examinations when requested by the employer
- Employees are entitled to have access to their medical records.

Reg 23 Washing and changing facilities

Employers must provide adequate washing and changing facilities, and facilities for storing PPE, RPE and personal clothing – which must all be separate from each other.

There are also requirements for the employer to keep premises clean, seal and label asbestos waste, carry out and record air monitoring, designate asbestos areas and respirator zones, and make arrangements for employees to have separate areas for eating, drinking and smoking, ensuring competent persons are used. Standards are set for analysis of materials.

Other regulations cover prohibitions of exposure to asbestos, on importation, supply or use of asbestos and labelling of products.

What can safety reps do?

- Never assume your workplace is asbestos free unless you are absolutely certain.
- Do not start work until a risk assessment has been carried out
- Ensure the employer surveys the premises for asbestos, carries out risk assessments and draws up an action plan, in consultation with workers, to deal with asbestos if it is found or disturbed
- Make sure you are involved in all risk assessments and are given copies of these and the plans of work
- Stop any job immediately if you suspect asbestos is present
- If the work is being carried out on non-domestic premises which are not your employer's, has the person in control of the building provided your employer with their written plan identifying where asbestos is to be found and given you a copy?
- Ensure all workers are kept informed about the risks associated with asbestos and control/prevention measures
- Ensure all workers are provided with appropriate training about the new regulations
- Ensure that the workforce is provided with appropriate protective equipment including respiratory equipment
- Insist that all work with asbestos complies with Control of Asbestos Regulations 2006

Compensation for personal injuries

The union provides a comprehensive compensation service, through our solicitors, for members and retired members who have developed ill-health caused by exposure to asbestos. Consult your RIO. There are very strict time limits to pursue claims. You should not delay in seeking advice, however long ago you were exposed to asbestos.

This is a very brief summary of the new regulations. For more information please consult the regulations, and the HSC Guidance and Approved Codes of Practice which are available from HSE Books.

The HSE has published a special leaflet for safety representatives which is at www.hse.gov.uk/asbestos

More information also available from Susan Murray 0207 611 2596

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